

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRIAN K. PEARLMAN,	§
	§ No. 428, 2008
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0707015257
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 13, 2009

Decided: March 25, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 25th day of March 2009, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Brian K. Pearlman, filed an appeal from the Superior Court's August 12, 2008 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. We find no merit to the appeal. Accordingly, we affirm.

(2) The record reflects that, in January 2008, Pearlman pleaded guilty to one count of Exploitation of an Infirm Adult and three counts of Theft. He was sentenced to a total of eleven years incarceration at Level V, to be suspended after two years for probation. Pearlman did not file a direct appeal.

(3) In this appeal from the Superior Court's denial of his postconviction motion, Pearlman claims that a) the Superior Court judge sentenced him with a closed mind; and b) he should have been permitted to review the presentence report to ensure that information favorable to him was included.

(4) Pearlman's claims implicate only the sentences he received and not his conviction. As such, they are not properly cognizable under Rule 61.¹ Even if viewed under the standards applicable to a motion for sentence modification under Rule 35(b), Pearlman's claims are unavailing. The record reflects that Pearlman previously filed two unsuccessful motions for sentence modification in the Superior Court, the first on March 23, 2008 and the second on May 8, 2008. As such, his instant motion is repetitive and may not be considered.²

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹ Super. Ct. Crim. R. 61(a) (1).

² Super. Ct. Crim. R. 35(b).

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